

**UNITED STATES DISTRICT COURT  
UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN**

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**EXTREME NETWORKS, INC.,**

**Plaintiff,**

**v.**

**ENTERASYS NETWORKS, INC.,**

**Defendant.**

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**Civil Action No. 07-C-0229-C**

**DEFENDANT ENTERASYS NETWORKS, INC.'S  
MOTION FOR PROTECTIVE ORDER AND TO PRECLUDE LATE  
ADDITION OF ASSERTED CLAIMS**

Defendant Enterasys Networks, Inc. ("Enterasys") respectfully requests that this Court issue an Order barring Plaintiff Extreme Networks, Inc. ("Extreme") from adding six (6) additional patent claims at this stage of the proceedings.

As grounds for this Motion, Enterasys sets forth the following, which is further detailed in the accompanying memorandum in support of this motion being filed herewith and incorporated by reference herein.

Extreme's attempt to increase the number of claims it is asserting against Enterasys from eleven (11) to seventeen (17) should be rejected as untimely. Late in the day on November 21, 2007, the day before Thanksgiving, Extreme served supplemental interrogatory responses on Enterasys, through which Extreme--for the first time--added six (6) new patent claims, which it had not previously asserted in this matter. Enterasys objected and the parties held two meet-and-confer conferences, the second occurring on December 5, 2007. At the conclusion of the second teleconference, counsel for Extreme stated that Extreme would consider withdrawing some of the six new claims. Then, the very next day, the day before the exchanging of expert reports,

Extreme served further supplemental interrogatory responses in which it removed three of the newly asserted six claims, but then asserted three additional infringement claims from a different patent.

Extreme attempts to add these six (6) claims despite the fact that: (i) Extreme itself chose to file this action in April 2007; (ii) Extreme agreed to the schedule established by the Court on June 5, 2007; (iii) Extreme had already asserted 11 patent claims against Enterasys and disclosed those claims during the pre-claim construction exchange between the parties; (iv) this Court already considered claim construction issues and issued its claim construction Order on November 21, 2007; (v) Extreme first notified Enterasys that it wished to assert these six (6) additional claims just two weeks (and for three claims just one day) before the exchange of expert reports; and (vi) the documents Extreme uses to support these new claims have been in its possession for several months and help form the basis of earlier infringement contention charts served by Extreme. Despite Enterasys' requests, Extreme refuses to withdraw these late-added claims.

Accordingly, and as set forth more fully in Enterasys' accompanying Memorandum, Enterasys respectfully requests that the Court grant its Motion for Protective Order and to Preclude Late Addition of Asserted Claims.

#### **REQUEST FOR ORAL ARGUMENT OR TELECONFERENCE HEARING**

Enterasys respectfully requests a hearing to be set, either in person or via teleconference, for the purposes of oral argument regarding this Motion.

#### **COMPLIANCE WITH THE COURT'S PRE-TRIAL CONFERENCE ORDER**

Pursuant to the Court's June 5, 2007, Pre-Trial Conference Order, the parties made a good faith attempt to quickly resolve the dispute surrounding Extreme's decision to add six new claims. Enterasys sent a letter, dated November 27, 2007, to counsel for Extreme, and the

parties have conducted two subsequent telephone conferences to address the issue. Extreme's final response to the issue was to serve supplemental interrogatories on December 6, 2007 and add three more claims to the case.

Dated: December 7, 2007

Respectfully submitted,

ENTERASYS NETWORKS, INC.,

By its attorneys,

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**CERTIFICATE OF SERVICE**

I, Alan E. McKenna, hereby certify that on December 7, 2007, I caused the attached document to be served upon Plaintiff's counsel of record via E-Mail, as indicated below:

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